THE HON'BLE SRI JUSTICE J. CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE D. APPA RAO

W.P. No. 11278 of 2006

Dated: 13 -10-2006

Between:-

Smt. Lputtabhanthi Nagamani w/o P. Srinu, aged 23 years, R/o Khammam, near Grain Market, Khammam District.

…Petitioner

and

1. Government of Andhra Pradesh, represented by its Chief Secretary to Government, General Administration (Law and Order.II) Department, Secretariat Buildings, Hyderabad.
2. The Collector and District Magistrate, Khammam District, Khammam,
3. The Superintendent, Central Prison, Warangal, Warangal District.

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Respondents

THE HONOURABLE SRI JUSTICE J. CHELAMESWAR
AND
THE HONOURABLE SRI JUSTICE D. APPA RAO

W.P. No. 11278 of 2006

O R D E R (Per Hon'ble Sri Justice D. Appa Rao)

The Collector & District Magistrate, Khammam District, the 2nd respondent herein, passed an order in Ref. No. C1/674/2/2006, dated 02.04.2006, directing the detention of Sri Puttabanthi Sreenu, the husband of the petitioner, under the provisions of the Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986, (for short 'the Act') alleging that the detenu was indulging acts of selling illicit distilled liquor. Reference was made in nine cases, which were registered against him. Assailing the said detention, his wife filed this writ of Habeas Corpus.

2. The detaining authority referred to the following cases wherein the detenu was found in possession of illicit distilled liquor.

(1) C.O.R. No. 23/2005-06, under Section 7-A r/w 8 (e) of A.P. Prohibition Act, 1995 was registered on 07-04-2005 for possession of 10 lts of I.D. liquor.

(2) C.O.R. No. 73/2005-06 u/s 7-A r/w 8 (e) of A.P. Prohibition Act, 1995, was registered on 23.04.2005 for possession of 10 liters of I.D. liquor.

(3) C.O.R. No. 221/2005-06 u/s 7-A r/w 8 (e) of A.P. Prohibition Act, 1995 was registered on 06-06-2005 for possession of 10 lts of I.D. liquor.

(4) C.O.R. No. 368/05-06, u/s 7-A r/w 8 (e) of A.P.

Prohibition Act, 1995 was registered on 25.07.2005 for possession of 10 litres of I.D. liquor.

(5) C.O.R. No. 670/2005-06, u/s 7-A r/w 8 (e) of A.P. Prohibition Act, 1955 was registered on 20-10-2005 for possession of 10 lts of I.D. liquor.

(6) C.O.R. No. 885/2005-06 u/s 7-A r/w 8 (e) of A.P. Prohibition Act, 1955 was registered on 14-12-2005 for possession of 6 lts of I.D. liquor.

(7) C.O.R. No. 906/2005-06, u/s 7-A r/w 8 (e) of A.P. Prohibition Act, 1995 was registered on 19-12-2005 for possession of 5 lts of I.D. liquor.

(8) C.O.R. No. 1002/2005-06, u/s 7-A r/w/ 8 (e) of A.P. Prohibition Act, 1995 was registered on 10-01-2006 for possession of 8 lts of I.D. liquor.

(9) C.O.R. No. 1230/2005-06, u/s 7-A r/w 8 (e) of A.P. Prohibition Act, 1995 was registered on 06-03-06 for possession of 9 lts of I.D. liquor.

3. The learned counsel for the detenu submits that while these cases were registered against the detenu with false allegations, there is no concrete evidence or material to suggest that he was indulged in activities of a bootlegger. He contends that the order was passed on extraneous material and the same was not supplied along with the grounds of detention so as to able to detenu to submit effective representation with the detaining authority, the Government of Andhra Pradesh as well as Advisory Board. He further elaborated by stating that the liquor said to have been seized was containing impurities like higher alcohols, acids, aldehydes etc. was not made a mention nor the report of the Chief Physician of Osmania General Hospital who stated that it is injurious to health. Since the documents and materials relied upon in the order of detention form an integral part of the grounds and when the said documents and materials were not supplied to the detenu, his detention was illegal.

4. The detaining authority, the 2nd respondent herein, filed counter stating that having satisfied from the material placed before him that the detenu has been indulging in the offences of possession, transportation and sale of I.D. liquor and acting in a manner prejudicial to the maintenance of public order and tranquility thereby causing danger to the public health, the order of detention was passed. He further stated that the opinion of the Chemical Examiner in regard to illicitly distilled liquor and their process of manufacture through unscientific methods and the opinion expressed by the Expert in the medical field about the affects of consumption of illicitly distilled liquor are indicated in the grounds of detention and it is for the detenu to establish that prejudice was caused to him for non-furnishing of the opinion of the Medical Expert. Therefore, the allegation that the order of detention was passed on extraneous material is incorrect. The order of detention was validly made.

5. The learned Advocate General submits that the detaining authority after elaborately considering the various cases registered against him and having satisfied that the detenu is habitual bootlegger and recourse to the ordinary criminal law did not deter from undertaking such activities rightly passed the impugned order.

6. From the various contentions urged by the learned counsel for the petitioner, we are of the view that, touching upon the non-furnishing of the material documents becomes relevant and central for disposal of this writ petition.

7. It is undisputed fact that the detaining authority has taken cognizance of two reports issued by the Professors of Medicine and Chief Physician of Osmania General Hospital in arriving at the conclusion that it was unfit for human consumption. It is also not in dispute that these reports were not made available to the detenu.

8. The Supreme Court in a number of decisions starting from *Icchu*

Devi Choraria v. Union of India[1] to the case of *Kamla Kanhaiyalal Khushalani v. State of Maharashtra*[2], opined that the documents and materials relied upon in the order of detention form an integral part of the grounds and must be supplied to the detenu pari passu the grounds of detention. If the documents and materials are supplied later, then the detenu is deprived of an opportunity of making an effective representation against the order of detention. Repeatedly the Supreme Court opined that the documents and materials relied upon in the grounds of detention should be supplied and non-supply would make the detenu thereby deprived of his constitutional right to make effective and expeditious representation and consequently detention order is void and liable to set aside.

9. The detenu herein was seriously handicapped in making an effective representation because the aforesaid documents, which were of vital importance, were not supplied to him. Since the documents and materials were not furnished to the detenu, the order of detention can no longer sustain. Therefore, the order of detention is set aside and the detenu shall be released forthwith.

10. The writ petition is allowed, and the order, dated 2.4.2006, in Ref. No. C1/674/2/2006, is set aside. The petitioner shall be set at liberty forthwith. No order as to costs.

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J. CHELAMESWAR, J

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D. APPA RAO,J

Dated: 13-10-2006
vp

Note:
Issue CC by today
(b/o)

vp

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[1] (1980) 4 SCC 531

[2] AIR 1981 Supreme Court 814